

American Electronics Company and United Electrical, Radio and Machine Workers of America, Local 1139. Case No. 18-CA-1273. December 11, 1961

DECISION AND ORDER

On October 11, 1961, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. He also found that the Respondent did not violate Section 8(a) (1) by interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, as alleged in the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and supporting briefs.¹

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record. The Board affirms the Trial Examiner's rulings and adopts his findings and conclusions.²

ORDER

The Board adopts the Recommendations of the Trial Examiner with the modification that Section 2(d) read: "Notify the Regional Director for the Eighteenth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."³

¹ Since neither the General Counsel nor the Charging Party have filed exceptions to the Trial Examiner's failure to find the independent Section 8(a) (1) violations alleged in the complaint, we adopt their dismissal *pro forma*.

² In his Intermediate Report, the Trial Examiner noted the failure of the Respondent to call as witnesses Goldner, plant superintendent, and Weglarz, a foreman, but without drawing any specific inference therefrom. The Respondent, in its exceptions and in a special brief filed on this point, contends that a major consideration in its decision not to call them as witnesses was to accommodate the Trial Examiner's desire, expressed off the record, that the hearing be concluded without delay since it was already late in the evening of the second day of testimony. The Respondent urges that there has been a fundamental denial of a fair hearing and due process in the Trial Examiner's repeated references to the fact that Goldner and Weglarz were not called to testify, without explaining why this was so. We note that the Respondent did call as its witnesses individuals who had participated in many of the same conversations to which Goldner and Weglarz would also presumably have testified. We do not believe that Respondent has been prejudiced by the Trial Examiner's references to their failure to testify, but we specifically disavow any inference unfavorable to Respondent, arising from this situation, in adopting the findings and conclusions of the Trial Examiner.

³ In the notice attached to the Intermediate Report as Appendix, the words "Decision and Order" are hereby substituted for the words "The Recommendations of a Trial Examiner." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed on May 29, 1961, by United Electrical, Radio and Machine Workers of America, Local 1139, herein called the Union, the General Counsel for the National Labor Relations Board on July 14, 1961, issued his complaint against American Electronics Company, herein called Respondent. The complaint alleges that Respondent coercively interrogated its employees concerning their support of and activity on behalf of the Union, promised benefits to its employees if they voted against that Union at an election which the record shows was a consent election held on March 24, 1961, and on or about May 24, 1961, discriminatorily discharged Dean Harris, thereby violating Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519). Respondent's answer denies the commission of any unfair labor practices.

Pursuant to due notice, the duly designated Trial Examiner conducted a hearing at Minneapolis, Minnesota, on August 28 and 29, 1961, at which both parties were represented by counsel.

The parties have filed briefs which I have duly considered. Upon the entire record, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent is a Minnesota corporation whose principal office and place of business is at Minneapolis, Minnesota. It is engaged in the manufacture and sale of electronic equipment component parts. During the 12 months preceding the hearing Respondent made sales and shipments valued at more than \$400,000 from its plant directly to points outside the State of Minnesota. During the same period it employed 60 to 70 employees. Respondent's answer admits and I find that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio and Machine Workers of America, Local 1139, is a labor organization within the meaning of the Act, and admits employees of Respondent to membership.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The discharge of Dean Harris*

1. Preliminary

Harris was first employed by Respondent on December 8, 1959, as an assembler in the power supply department at \$1.75 an hour, under the foremanship of Theodore Weglarz.¹

On February 11, 1960, Harris suffered an injury while at work which resulted in the amputation of three fingers of his left hand between the first and second joints. He was confined to a hospital for a week and thereafter at home until May 11. Glenn Stout, Respondent's president, visited him at the hospital. According to Harris, Stout told him not to worry about his work and that he would have a lifetime job with Respondent. Stout testified that Dean was worried lest he lose his job and that he assured him that he would not and that Respondent would make every effort to assign him work commensurate with his ability to perform it, but did not promise him that he would guarantee specific work for any specific period of time. I credit Stout's account of this conversation. Harris was under sedation at the time and I think he misunderstood what Stout said.

When Harris returned to his job on May 11, 1960, he was put back on his job as assembler. His work from that time until his separation on May 24, 1961, is hereinafter discussed under the appropriate heading.

¹The supervisory nature of Weglarz' duties is in dispute. The record shows, however, that he assigns work to employees, including overtime, recommends employees for pay raises, grants time off, responsibly directs the work of the seven employees in the power supply department, and attends meetings of supervisors.

2. The birth of the employee committee

During the latter part of January 1961, Harris became the prime mover in the formation of a committee of employees to discuss working conditions with Respondent. On February 6, according to his testimony, he approached Ruthenbeck, in charge of quality control, and in the presence of Weglarz asked him what he thought about bringing a union into the shop, to which Ruthenbeck replied that he did not care one way or another, but to ask Weglarz. Weglarz said nothing. However, on the following day, February 7, according to Harris, Weglarz asked him what the talk was about a union and Harris said that many of the employees were complaining that they could not get their grievances resolved and that if a union did come in it would be successful. Weglarz then suggested that Harris talk with Leo Ohman, vice president in charge of production, and that he, Weglarz, would make an appointment with him later that day. Weglarz was not called as a witness and I find that this conversation was in substance as Harris related it. However, Ohman fixes the date of the meeting as January 30, instead of February 7, and I accept this date as correct.

There is no substantial disagreement as to what took place at the meeting in Ohman's office between Ohman and Harris which Bruce Goldner, plant superintendent, who did not testify, also attended. It concerned the formation of the employees' committee and Harris' alleged poor production. Purely by chance, I find, a meeting of members of the employee committee, scheduled for that noon hour, did not take place because of Harris' presence in Ohman's office.

Though there is little disagreement as to what was said at this meeting, there is some disagreement in the record as the reason for calling it. Ohman testified that he called it because of Harris' poor production, whereas, as I have found, it was arranged by Weglarz so that Harris and Ohman might discuss the employee committee. Both matters were, in fact, talked about after the meeting got underway, but I find that Respondent merely took the opportunity thus presented to criticize Harris' work. Hence I cannot accept the contention in Respondent's brief that "Ohman's initial act in calling the meeting occurred without any notice of any activity on behalf of any kind of employee organization or union. . . . From its inception, respondent's real purpose was economic." To the contrary, I find that its real object was to discuss the committee.

The point is of importance in view of Respondent's contention that poor work performance by Harris was a reason, coupled with his claimed resignation, for his separation on May 24. For the record is clear, and it is not contended otherwise, that the meeting in Ohman's office January 30, 1961, was the first time since Harris' return from the hospital on May 11, 1960, that management criticized his work.

Harris, expanding on his theme of how the committee might function, told Ohman and Goldner that it "wasn't a spur-of-the-moment thing but a well thought out plan," and that it would meet once a month with management to discuss grievances such as the method of granting pay raises and laying off personnel. He gave it as his opinion, as he had to Weglarz the previous day, that if a union came in it would be successful.

To this Ohman rejoined that any collective bargaining would hinder Respondent's plans for expansion, and that a union would probably result in strikes and a shut-down of the plant. Ohman also said, according to his own account, that he was "just getting (his) feet on the ground" and that he "preferred working with individuals." Harris, according to Ohman, "seemed more interested in talking about this committee than getting into any other subject," but Ohman did tell Harris that Respondent had estimated closely on an IBM job it was then doing, and that Harris was not doing "what I thought he could do," and that he "wasn't satisfactory with his performance." He did not elaborate.

3. The advent of the Union

On February 7, a week following this meeting, representatives of the Union got in touch with Harris at his home and gave him a number of union membership cards one of which Dean signed and the rest of which, with some help, he distributed among the employees up to March 24, the date of the election. An election petition was filed February 23; a consent-election agreement was signed March 6; and a conference on the payroll was held on March 24, the day of the election, which Harris attended. The Union lost the election, which Harris attended as observer for the Union.

The first organizational meeting of the Union was on February 15. On the following day Harris was again called to Ohman's office where, in the presence of Goldner and Weglarz, Ohman told him he was far down in his production, that he was "visiting" too much, and that he was "spreading unrest" among the other employees. He gave it as his opinion that this was because Harris felt "on the defensive," due to his injury. Although Harris testified that Ohman did not specify in what respect his production was down, Ohman stated that he mentioned his work in stenciling.

Following this meeting, according to Ohman, Respondent concluded that Harris was not going to "make the grade" in production and, after reviewing various jobs in the plant, Ohman convened a third meeting with Harris on February 21. Ohman again told Harris that his production was down, that he was "mad" at Respondent because of his injury, and that he thought Harris was not capable of doing point-to-point wiring on his assembly job.² At this meeting Ohman offered Harris work in the drafting department to which Harris replied that he had no training in drafting and did not care for the work. Ohman told him to think it over and he agreed to do so.

As has been found, the Union filed its petition on February 23, asking for a bargaining unit of production and maintenance employees with the usual exclusions. If Harris had accepted transfer to the drafting department it would have removed him from the unit.

On February 24, the day following the filing of the petition, Ohman called Harris to his office for a fourth meeting. He again spoke to him about his production and his "attitude," and presented him with a letter signed by Ohman confirming the offer of the drafting job to Harris and asking for his acceptance or refusal. Harris refused it.

After this refusal, there was then mentioned for the first time the possibility of Harris' resignation. The context of what was said is clear, though not the sequence. Harris testified:

Q. What did Mr. Ohman say to you then?

A. He referred to notes he had on his desk and reviewed the prior meetings we had had and discussed particularly my poor production, my attitude and so on, and asked me if I had decided to take the job in the drafting department.

Q. What did you tell Mr. Ohman?

A. I told him I hadn't been convinced that I was not doing my work as I should on the floor and that I didn't care for the drafting job because of my inexperience and so on and I told him that I didn't feel it was fair of the company to fire me because I had cut some fingers off my hand and that the least the company could do was to give me some time to adjust—

* * * * *

Q. Do you recall—this is the February 24 meeting?

A. Well toward the end of the meeting I was getting thoroughly disgusted at the manner that he was bringing up my inability to do work on the floor—I told him during the end of this meeting that there was a possibility I could get a job in three or four months with the REA up north and I would at that time get out of their hair.

Ohman testified on the point as follows:

Q. And would you tell us what happened at the meeting?

A. Well, at that meeting I asked Bill if he had made a decision and he said he had and he had decided not to take the drafting job. He said I'd like to have about three months, I've got a job up north—and he said the reason he'd like to have three months is because it's difficult to sell a home at this time of the year—

* * * * *

TRIAL EXAMINER: I'd like to have the conversation as closely as we can get it. What was said—

* * * * *

The WITNESS: He said—I'm trying to think of exactly the words—something to the effect, anyway, that he wanted three or four months and I'll leave American Electronics—and I chose the three months, with the choice.

² Asked if Harris was required to do point-to-point wiring, Ohman stated that it was called for in Harris' job classification, but was unable to say whether there had been occasion for him to do it. He further stated that if called upon he believed Harris could do it and meet the production norm, but could not do as much of it as employees not handicapped as Harris was.

A month intervened between this meeting and March 24, the date of the election. A conference was held at the plant on that day, just before the election, attended by Stout, Ohman, and Bergstron, a labor relations consultant, on behalf of Respondent, with Harris and another person, not employed by Respondent, representing the Union.

The Union lost the election and the results were certified on April 5. On April 7, Ohman called Harris to his office for a fifth meeting, with Goldner and Weglarz present. Ohman told Harris that he was not doing a good job on a certain contract on which Respondent had bid closely, that he was on the "defensive," and that he had made a "wise decision" to leave Respondent's employment. Harris, according to his own testimony, was disturbed by Ohman's mention of his resigning and requested an interview with Ohman which the latter granted on April 10. Harris told Ohman at this meeting, the sixth, that there must have been a misunderstanding about his quitting and asked Ohman for something in writing which would show whether his termination was to be regarded as a discharge or layoff. Ohman refused the request, telling him that he had given notice on February 24 that he was quitting and that it would be better to say that he had resigned.

On April 12, Harris wrote Respondent as follows:

In order to clear up what appears to me to be a misunderstanding on your part as to my employment—I wish to inform you that I have no intention of quitting or leaving my present job.

Any statement I may have made to you that I might possibly at some later date quit was not intended to be a positive notice to you of intention to quit my job.

Therefore, to set the record straight, I wish to inform you that I plan to continue my employment up to and after May 24, 1961.

On April 14, Respondent replied:

Acknowledging your letter of April 12, 1961, there is no misunderstanding on our part.

Your intent to terminate your employment . . . was most clearly established in the meetings we had the past several weeks and most particularly since you turned down a job which the company believed you might satisfactorily fill.

We cannot extend the period time of your employment beyond May 24, 1961, that was clearly established at a recent meeting and cannot be rescinded.

The seventh and last meeting between Harris and Ohman was called by Ohman on May 24th, at which Ohman offered Harris a vacation paycheck and his final check, both of which he refused, stating that he had not resigned. When Harris went to the plant the following day to go to work he found that his timecard had been pulled.

4. Respondent's alleged reasons for terminating Harris

Harris' Work Record; His Alleged Resignation

When Harris returned to work on May 11, 1960, after his injury, he was put back on his job in the power supply department, as an assembler. His work remained basically this until about February when he began to be assigned jobs in other departments though he continued to be responsible to Weglarz. For example, in February 1961, for about 3 weeks, Harris worked on stenciling and assembling intermittently in the coil winding department under the direction of John Schneider, department foreman. His stenciling, according to Schneider, was slower than average. On one occasion Schneider showed Harris a way of lining up magnets in connection with the assembly of magnetic actuators, and recommended this way to Harris. The latter, however, preferred to line up the magnets in his own fashion, and Schneider did not "make a point of it." On two occasions Schneider requested Harris to put on a white smock which Respondent furnished employees in that department, and Harris did so, only to be without it the next day. This costume was not mandatory, according to Schneider, but only recommended.

Jack Kachina, who worked in the transformer department, but whose position does not appear on the record, testified that when Harris was doing stenciling work in that department in the early part of 1961, he printed a stencil unevenly on a transformer, and it had to be done over. The third attempt was satisfactory. Otherwise, his work was "pretty good," according to Kachina.

In May 1961, Harris worked for a short period in the mechanical switch department, riveting plungers, under the supervision of Swinney, department fore-

man. Swinney appraised Harris' work as lackadaisical after observing it for 1 day and recommended to Ohman that he be discharged. Ohman told him that Harris was leaving in 2 or 3 weeks and to put up with him. According to Ohman, in 23 hours during which Harris did riveting he averaged 80.9 pieces per hour, whereas three other employees, working together, averaged 92 pieces per hour. Admittedly, however, there was difficulty with materials which may or may not have affected all these employees equally.

Neither Goldner nor Weglarz was called as a witness. Ohman's own observation of Harris was such as he could make in passing by Harris' place of work in the power supply department on his way to some other part of the plant. He testified that when Respondent was engaged in the IBM job where he estimated that 260 to 265 "pieces" should be assembled each hour, he knew by looking at Harris as Ohman passed by that he could not be doing his work in such a way as to meet this estimate. Harris was doing lugging at the time. Ohman testified on cross-examination that on August 4, 1961, shortly prior to the hearing in this case, and long after Harris had been separated, he had the records on lugging in connection with the IBM job checked, "to back up my statement" (i.e., his observation of Harris' work) and found that it was correct.

There are other instances, adduced by Respondent, of work done by Harris which Respondent contends demonstrate that it was falling off after the early part of 1961. I do not find it necessary to discuss these instances in detail. The fact is, as I have found, that prior to the meeting in Ohman's office on January 30, 1961, neither Ohman nor Plant Superintendent Goldner, nor Weglarz, foreman of the power supply department under whose general supervision Harris remained, or any other supervisor for whom Harris worked from time to time, spoke to him about his work by way of formal reprimand or warning. Respondent's case against Harris, so far as his work performance is concerned, relies principally on Ohman's examination and analysis of records in preparation for the hearing. I do not find it convincing.

At the hearing the General Counsel laid stress on Stout's alleged guarantee that Harris would have a "lifetime job" with Respondent. I have found that no such promise was made—that what Stout promised him was to make every effort to assign him work commensurate with his ability to perform it. My conclusions are based on different premises.

Respondent's defense is not entirely clear. On the one hand it maintains that Harris resigned. On the other hand it maintains, in its brief, that "whatever the technical name of his termination, it was bottomed upon economic considerations viz: his poor attitude and performance." Physical inability to perform his work because of his injury is not specifically claimed. It is said that Harris "had a post-traumatic attitude that he deserved nothing less and that Respondent was doing no more than it owed him." The theory seems to be that due to this frame of mind, Harris, dating from his return from the hospital, sloughed off in his work until a point was reached where he "resigned under circumstances where neither he nor Respondent (was) satisfied with his employment."

I do not find that this point was ever reached so far as Harris is concerned. There was no resignation. Harris' testimony, quoted above, which I credit, was that there was a possibility that he could get a job in 3 and 4 months with the REA, or one of the other places he mentioned as a prospect, and that he would at that time (i.e., if he got the job) leave Respondent's employ. I do not find it reasonable to believe that Ohman thought that Harris already had the job and that it was being held open for 3 or 4 months, or until Harris sold his home. Ohman's further testimony when asked what Harris said, was that he said "something to the effect" that he wanted 3 or 4 months, and would then leave.

The next meeting between Ohman and Harris was on April 7, 2 days after the Union had lost the election. Ohman again told him he was not doing good work on the IBM job, and congratulated Harris on his "wise decision" to resign.

If there could have been any doubt in Ohman's mind that Harris had not in fact resigned, it was dissipated by Harris, who, disturbed by Ohman's April 7 congratulations on his resignation, told Ohman on April 10 that Ohman had misunderstood him, and asked Ohman to state in writing whether Respondent's termination of his employment was to be construed as a discharge or a layoff. Ohman's refusal of this request was coupled with his insistence that the coming separation be characterized as a resignation. Again, on April 12, by letter, Harris informed Respondent that he planned to continue his employment beyond May 24, 1961, and that Respondent had misunderstood what he said on February 24. Respondent's reply on April 14, reveals a determination to put Harris in the position of resigning. His resignation is said to be "clearly established," particu-

larly since he had refused a transfer to the drafting department, although it is nowhere in this record asserted, by any witness, that Harris' acceptance of the drafting job was a condition of his continued employment.³ It is said that it cannot be rescinded, even though, assuming a resignation, it lacked 6 weeks of becoming effective.⁴

Conclusions

I find that Harris' termination was not caused by his resignation, or by discharge for good cause, but that he was discharged for reasons not related to his work. Respondent, admittedly, was opposed to organization of its employees by the Union. This opposition extended to collective-bargaining activity of any kind. Ohman made this clear to Harris when he called him to his office on January 30. On that occasion Ohman, for the first time, criticized his work, though in general terms.

Shortly thereafter Harris began to organize the employees into the Union. This activity was known to Respondent. On February 23, the Union filed its petition claiming to represent the production employees. On the next day Harris was again offered, and this time refused, a transfer to the drafting department, first offered him on February 21, a transfer which would have removed him from the bargaining unit and would have seriously impaired, if not destroyed, his effectiveness as the leader in the organization of Respondent's production employees.⁵ Immediately upon Harris' refusal of the transfer, and in the same conversation, Harris' resignation was broached for the first time. Respondent elected to construe Harris' statement that he could get a job elsewhere in 3 or 4 months' time as a resignation, and fixed its effective date as May 24. When Harris made it clear at the meeting of April 10, that he had not said he was resigning, and in his letter of April 12 stated that he expected to continue beyond May 24, Respondent maintained the adamant position that he had resigned, asserting, at the hearing, that this was a matter of company policy or precedent. No such policy or precedent was shown. At seven meetings with Harris between January 30, 1961, when Harris' interest in collective bargaining first became known to him, and May 24, the date of Harris' termination, Ohman maintained a sustained effort to bring about, first Harris' transfer, and then his separation as an employee, preferably by resignation. Although on these occasions Ohman criticized Harris' work, at the same time he told him that he was creating "unrest" among the employees, he gave no particulars other than that Harris was not doing what he could do. He had no particulars until, long after Harris' separation, he consulted Harris' supervisors and analyzed Respondent's production records in the preparation of Respondent's defense.

I conclude and find that Respondent, on May 24, 1961, discharged Harris because of his activity in the organization of its employees.

B. Other alleged interference, restraint, and coercion

On March 23, the day before the election, President Stout addressed the employees assembled in a meeting at the plant. He told them that a union would not be good for Respondent or the employees and that a vote against the Union would be a vote of confidence in Respondent. Piecing together the testimony of Stout, who referred to notes, with that of Harris and employee Weidendorf, I find that Stout's speech was in the *American Tube Bending*⁶ pattern and not in itself violative of the Act, since it did not contain threats of reprisal or promises of reward.

The General Counsel urges that Weglarz' asking Harris on January 30, 1961, "what the talk was about getting a union in the shop," was violative of the Act.

³ Respondent, in its brief, in addition to its alternative contentions that Harris' termination was (1) "bottomed upon economic considerations *viz.*, his poor attitude and performance" and (2) that Harris resigned, advances (3) that he "implicitly quit by refusal to take assigned work."

⁴ Respondent's brief maintains that it was "not unusual" to refuse to permit an employee to rescind a resignation once given, but cites only the instance of an employee, Weidendorf, in support of this assertion. Weidendorf's testimony does not substantiate this. He testified that he *did* resign, that he gave Goldner 1 week's notice of his leaving, that a day or so before the effective date he changed his mind and asked to be continued on his job, and was refused because another employee had already been hired in his place.

⁵ It is true, as Respondent's brief points out, that Respondent on February 21 had not been officially informed of the unit sought by the Union. Unofficially, Respondent must have known that the Union was seeking to organize its production employees.

⁶ *N.L.R.B. v. American Tube Bending Co., Inc.*, 134 F. 2d 993 (C.A. 2), setting aside 44 NLRB 121, cert. denied 320 U.S. 768.

I cannot agree. Weglarz' question was occasioned by, and in effect was a continuation of, the conversation the previous day, initiated by Harris, who asked Ruthenbeck and Weglarz jointly what they thought about bringing a union into the shop.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, had a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As it has been found that Respondent discriminated with regard to the hire and tenure of employment of Dean Harris in violation of Section 8(a)(3) and (1) of the Act, the Trial Examiner will recommend that Respondent offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827. It will be further recommended that Respondent make the aforesaid employee whole for any loss of pay suffered by reason of the discrimination against him. Loss of pay shall be based upon earnings which Harris normally would have earned from the date of the discrimination against him, to the date of his reinstatement, less net earnings, computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289; *N.L.R.B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U.S. 344. It will also be recommended that Respondent preserve and, upon request, make available to the Board, payroll and other records to facilitate the computation of the backpay due.

As the unfair labor practices committed by Respondent involved discrimination and are therefore of a character striking at the root of employee rights safeguarded by the Act, it will be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Electrical, Radio and Machine Workers of America, Local 1139, is a labor organization within the meaning of the Act.
2. By discriminating in regard to the hire and tenure of employment of the employee named above in the section entitled "The Remedy," thereby discouraging membership in the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
4. The Respondent did not engage in the independent 8(a)(1) conduct alleged in the complaint.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that American Electronics Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Discouraging membership in the above-named labor organization, or any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment or any term or condition of employment.
 - (b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to join, form, or assist labor organizations, including the above-named labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be

affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer the employee named above immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole in the manner set forth in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and other benefits due and the rights of employment under the terms of the recommended order.

(c) Post at its plant at Minneapolis, Minnesota, copies of the notice attached hereto marked "Appendix." Copies of such notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being signed by the authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Eighteenth Region in writing, within 20 days from the date of the receipt of this Intermediate Report, what steps Respondent has taken to comply herewith.

It is further recommended that unless within 20 days from the date of the receipt of this Intermediate Report, Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Board issue an order requiring Respondent to take the aforesaid action.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in United Electrical, Radio and Machine Workers of America, Local 1139, or any other labor organization by discriminating in regard to the hire or tenure of employment or any term or condition of employment of our employees.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8(a)(3) of the Act.

WE WILL offer Dean Harris immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

AMERICAN ELECTRONICS COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.